

OFFICE OF THE ATTORNEY GENERAL



JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable L. W. Noonan
Judge of Probate
Mobile County
P. O. Box 7
Mobile, AL 36601

Fire Districts - Elections -
Probate Judges - Offices and
Officers - Petitions

Under Act No. 90-697 a fire district having a current indebtedness may not be abolished; the cost of the election establishing the fire district constitutes a debt of the district. Regular elections in county are on the first Tuesday after the first Monday in November in each even-numbered year.

Dear Judge Noonan:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Does the fire district established by a petition and referendum in 1991 have a current indebtedness which would preclude an abolition election for the district?

2. Is the probate judge required to accept upon its face the allegation contained in the abolition petition that the district "has therefore accumulated no operational debt," and therefore to order an election on the question of whether or not the district should be abolished?
3. Does the expense of the election on the question of abolition have to be paid by the fire district and, if so, is the probate judge authorized to require payment for that election before it is conducted?
4. Section 10 of the Act, Act No. 90-697, under which these fire districts are established provides that "such election shall be held at the same time and conducted by the same election officials as regular county elections." What is a regular county election? Is a party primary considered to be a regular county election?
5. How do candidates for trustee of fire districts under Act No. 90-697 qualify to run for that office? With whom do such candidates qualify?
6. Are candidates for trustee of fire districts to participate in party primaries?
7. Section 10 of Act No. 90-697 provides that the four-year terms of the trustees of fire districts established pursuant to the Act are to be staggered so that they expire two, three, and four years after the initial election. At which regular county elections are the successors for these terms to be elected if no regular election is due to be held in the expiration year, for instance, in November of 1993 or November of 1995?

FACTS, LAW AND ANALYSIS

Your several questions all arise out of the application of Act No. 90-697 which provides for the creation of fire districts in Mobile County. This Act was ratified and confirmed and further authorized by Amendment No. 532 to the 1901 Constitution of Alabama.

The pertinent portions of Act No. 90-697 are set forth below:

Section 4.

"Upon a petition being filed in the office of the probate judge of the county, the judge shall order an election to be held in the proposed district on the question, or questions on which the petition requests an election.

"The petition shall be signed by at least one hundred qualified property owners within the boundaries of the proposed district.

"The petition shall contain a description of the area proposed to be established as a district and shall request the probate judge to call an election on the following question: Shall there be created for the area a district for fighting fires? . . ."

Section 5.

"When a petition for the holding of any election is filed with the probate judge, the probate judge shall order the election sought by the petition to be held on a day not less than 30 nor more than 40 calendar days from the date on which the probate judge enters said order. No such election pertaining to the establishment of the same district or portion thereof shall be held more often than once every two years."

Section 8.

"Where an election is held on the question of the establishment of a district, the county commission shall pay for the necessary expenses of advertising and conducting such election out of the general funds of the county. Provided, however, that if the district is established, the district shall reimburse the county for the expenses incurred by the county in respect to said election.

"After a district has been established, the district shall pay the expense of any election held in the district or held in any area which is proposed to be added to the district."

Section 9.

"No district shall be created unless it is approved by the majority of votes cast at the election at which the proposed creation is submitted. Upon the office of canvassing the returns of the election certifying that the creation of the district was approved by the majority of the votes cast at such election, the proposed district shall be created and shall constitute a public corporation."

Section 10.

"The affairs of the business district shall be managed by a board of trustees consisting of five members who shall be elected by the qualified electors of the district. Such election shall be held at the same time and conducted by the same election officials as regular county elections. No person shall be elected to said board unless he is a property owner of the district. Elections shall be for a term of four years; provided, however, two of the initial five members shall be for a term of

two years, two shall be for a term of three years, and one shall be for a term of four years."

Section 15.

"Any district may be abolished in the manner provided for in this section; provided, however, that no district shall be abolished or diminished when it has any indebtedness.

"Upon the petition for abolition of a district, being filed with the probate judge, he shall order an election on abolition of the district to be held in the district within the time provided for by section 4. The qualified electors residing within the district shall be entitled to vote in the election. The petition shall be signed by at least one hundred qualified property owners of the district. It shall contain a recital that the district is not indebted, and it shall request the probate judge to order an election on whether the district shall be abolished. Upon the officer's canvassing the returns of the election certifying that abolition of the district was approved by a majority of the votes cast at the election, the district shall be abolished."

Act No. 90-588 proposed a constitutional amendment which was submitted at the general election held on November 6, 1990, and proclaimed ratified December 28, 1990, as Amendment No. 532 to the 1901 Constitution of Alabama. That Amendment provides as follows:

"The county commission of Mobile County is hereby authorized to establish and maintain fire fighting districts within Mobile County. The county commission is further authorized to enter into agreements with volunteer fire departments who are within the county for fire protection and services. The county commission is hereby

empowered to set fees for fire protection and to prescribe the manner of collection and distribution of such fees. The fire fighting districts herein authorized shall not include any corporate municipality of Mobile County unless such municipality requests through resolution of its governing body to be included in such fire fighting program. Any act heretofore enacted regarding said Mobile County fire fighting districts is hereby ratified and confirmed." (Emphasis added.)

Your first two questions are answered by reference to § 15 of Act No. 90-697, specifically where it provides:

". . . No district shall be abolished or diminished when it has any indebtedness." (Emphasis supplied.)

The Act also requires that the petition for abolition contain a recital that the district is not indebted. Section 8 of the Act provides:

". . . [I]f the district is established, the district shall reimburse the county for the expenses incurred by the county in respect to said election.

"After a district has been established, the district shall pay the expense of any election held in the district or held in any area which is proposed to be added to the district." (Emphasis supplied.)

Thus, the expense of the election at which the district is established obviously comprises an indebtedness of the district. The legislature's use of the word "any" in connection with the term "indebtedness" in Section 15 makes it inclusive and, therefore, until the expense of the election establishing the district has been paid, the district has an indebtedness which would prevent its being abolished under Section 15. Accordingly, your first question turns on a factual determination which must be made by you as to whether or not the expenses of the election establishing the district have in fact been paid by the district. In a similar manner,

if you are aware that there is such a debt, you cannot accept the statement that the district has accumulated no operational debt. It is the opinion of this office that the proviso in Section 15 is not limited to operational debt but includes any indebtedness at all.

Turning now to your third question, if there is an election to be held on the question of abolition, the expenses of that election must be paid, pursuant to Section 8 of the Act, by the district, and constitutes a debt of the district to be paid before the abolition of the district becomes effective.

Section 17-2-4, Code of Alabama 1975, provides:

"Members of county commissions, one county treasurer in all counties having a county treasurer and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November, 1980, and every fourth year thereafter."

Section 17-2-3 provides for the election of senators, representatives, a sheriff, tax assessor, and tax collector in each county and one coroner in all counties having a coroner, and other officers not otherwise provided for, to ". . . be elected on the first Tuesday after the first Monday in November, 1978, and every fourth year thereafter." Thus, regular elections for county officers are held in even-numbered years. It is the opinion of this office that the term "regular county elections" as used in Section 10 of Act No. 90-697 refers to the elections held in the even-numbered years.

A party primary is not a regular county election. However, if a party holds a primary election to select its candidates for the regular election, candidates for trustee of fire districts may run in those primaries pursuant to their party rules.

Candidates for trustee of fire districts set up under Act No. 90-697 qualify to run for that office in the same manner as any candidate for any other county office.

Section 10 of Act No. 90-697, and your question in connection with the expiration of the terms set forth in Section 10, present something of a dilemma in that Section 10

provides that two of the initial five members shall serve a term of three years, which means that the terms of those two initial members will expire in an odd-numbered year in which there is no "regular county election." But Section 10 also requires that such election shall be held at the same time and conducted by the same election officials as regular county elections. Therefore, there is an ambiguity in the provisions of the statute. This ambiguity would be best resolved by legislation; however, if such legislation is not passed prior to the expiration of the three-year term, it will be necessary for a special election to be called to elect trustees for the subsequent terms. Such special election should be conducted by the same election officials as would conduct the regular county elections, and should be conducted as much as possible in the same manner as regular county elections, and be held on the first Tuesday after the first Monday in November of the year in which the term in question expires.

In responding to your several questions, we have attempted to respond also to other inquiries to the extent that they fell within the purview of your questions. We note also that Amendment No. 532, which appears to ratify Act No. 90-697, gives the county commission broad authority respecting the establishment and the maintenance of firefighting districts within Mobile County. Since the Act proposing the amendment was passed during the same legislative session in which Act No. 90-697 was passed, the two should be read together. Thus, it would appear that, in lieu of legislative action, ambiguities and omissions in the Act could be cured by the authority of the county commission of Mobile County to establish and maintain firefighting districts within the county under Amendment No. 532.

CONCLUSION

In conclusion, we answer your questions in the order set forth above as follows:

1. If the fire district established by petition and referendum in 1991 has not yet paid the expenses of that election, it has a current indebtedness which would preclude an abolition election at this time.

2. The probate judge is not required to accept upon its face the allegation contained in the abolition petition that

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the district "has therefore accumulated no operational debt" in that any debt at all would prevent abolition of the district under the terms of the statute.

3. The statute itself requires that after its establishment the district is to pay the expenses of any election held in the district for district purposes, which would include the expense of an abolition election. However, the probate judge cannot require payment for the election before it is conducted.

4. The regular county elections as that term is used in Act No. 90-697 refers to the elections held for public officials on the first Tuesday following the first Monday in November in even-numbered years. A party primary is not a regular county election.

5. Candidates for trustee of fire districts under Act No. 90-697 qualify to run for that office in the same manner and with the same officials as candidates for any other office in the county.

6. The election for those terms which end in odd-numbered years, in which no regular county election is usually held, will have to be filled by a special election held as near as possible in conformity with the laws and regulations respecting regular county elections.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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